

LOGGED
9:00-9:30:00IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

Plaintiff,

v.

Archer-Daniels-Midland
Company,
Ashland Chemical Company,
Division of Ashland, Inc.
Baltimore-Ennis Land Company,
Inc. (f/k/a/ Gibson-Homans),
Brookside Auto Parts,
Lincoln Electric Company,
Technical Products, and
Werner G. Smith,

Defendants.

1:98CV 2302
CIVIL ACTION NO.

JUDGE NUGENT

CONSENT DECREE

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CERCLA CONSENT DECREE
OHIO DRUM RECONDITIONING SITE

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I. BACKGROUND

1. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") of 1980, as amended, 42 U.S.C. §§ 9606 and 9607.

A. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred or paid by EPA and the Department of Justice for response actions at the Ohio Drum Reconditioning Site ("the Site") in Cleveland, Ohio, together with accrued interest; and (2) performance of studies and response actions by the Defendants at the Site consistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300 (as amended).

B. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. In 1979, EPA conducted an inspection of the Site, which consists of two parcels: the Industrial Property and a Swamp. Inspectors observed a plume of contaminants emanating from the Swamp toward Big Creek, a tributary of the Cuyahoga River and Lake Erie. Soil samples taken from the Swamp in 1980 confirmed the presence of organic chemicals, polychlorinated biphenyls ("PCBs") and metals. The United States alleges that Ohio Drum Reconditioning, Inc. ("Ohio Drum") dumped waste water down a drain located in the building on the Industrial Property that carried the waste water, via an underground pipeline, directly into the Swamp. The drain was covered by Ohio Drum in 1981.

D. In May 1981, EPA hired and paid a contractor to dig a bypass ditch to prevent the flow of water from the Industrial Property into the Swamp. In addition, an earthen berm was constructed along the west and south sides of the Swamp to prevent contaminants in the Swamp from leaching into Big Creek.

E. A site assessment performed by EPA on March 3, 1991, indicated that concentrations of PCBs, polynuclear aromatic hydrocarbons ("PAHs") and metals in soil/sediment samples taken from the Industrial Property, the Swamp and Big Creek exceeded

federal standards. During this site assessment, members of EPA's Technical Assistance Team observed animal and human footprints in the snow. Confirmatory sediment samples taken from the Swamp in May 1992 contained elevated levels of the same contaminants.

F. On July 29, 1992, heavy rains occurred in the Big Creek watershed. On July 30, 1992, the OSC visited the Site and found that the Swamp had flooded, likely causing the release of hazardous substances into Big Creek.

G. On April 29, 1996, EPA collected additional samples of surface soils from the Swamp. Analysis revealed that PCBs were present at concentrations exceeding action levels.

H. On September 10, 1996, EPA issued Unilateral Administrative Orders ("UAOs") to eighteen PRPs, including the Settling Defendants, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. The UAO required the recipients to: (1) designate a contractor and project coordinator to oversee the establishment of Site security; (2) develop and implement a Health and Safety Plan; (3) identify and characterize all hazardous substances in soil and sediments on Site; (4) excavate, treat and dispose of all contaminated soils and sediment that contain PCBs at concentrations above 25 ppm and lead at concentrations above 1,700 ppm; and (5) impose deed restrictions.

I. The Settling Defendants responded to the UAO by agreeing to perform the Work outlined in the Removal Action Plan (the "RAP"), as approved by the United States and incorporated herein.

J. Settling Defendants herein agree to undertake the removal action for the Swamp portion of the Site as set forth in the RAP. Based on the information presently available, EPA believes that the Work required by this Consent Decree will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

K. Settling Defendants submitted a Removal Action Plan ("RAP") that has been approved by EPA.

L. EPA believes that the RAP for the Swamp portion of the Site is consistent with the NCP, 40 C.F.R. Part 300, and is protective of human health and the environment.

M. EPA is placing this Consent Decree, its Appendices, the RAP and related documents in the local repository and EPA's administrative record for this Site. EPA will provide public review and comment on this Consent Decree and the RAP consistent with the requirements of Sections 122(d) and 117(c) of CERCLA, 42 U.S.C. §§ 9622(d), and § 300.415(m) of the NCP, 40 C.F.R. § 300.415(n).

N. The UAO as to the Settling Defendants will be withdrawn by EPA upon entry of this Consent Decree.

O. Solely for the purposes of Section 113(j) of CERCLA, the Removal Action described in the RAP and the Work to be performed by the Settling Defendants shall constitute response actions taken or ordered by the President.

P. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

3. This Consent Decree is binding upon the United States and upon Settling Defendants (as defined below) and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendants' responsibilities under this Consent Decree.

4. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to implement the RAP (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

B. "Certification of Completion" shall mean EPA's certification pursuant to Section XIII that the removal action has been completed at the Swamp portion of the Site in accordance with the requirements of the NCP and the RAP.

C. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

D. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

E. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

F. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

G. "Industrial Property" shall mean the portion of the Ohio Drum Reconditioning CERCLA Site where the former drum reconditioning facility was located. The Industrial Property, which is approximately .5 acres in size, is located at 3965 West 25th Street, Cleveland, Ohio, and is adjacent to the Swamp ("the Swamp").

H. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

I. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

J. "OEPA" shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State.

K. "Oversight Costs" shall mean those costs, including but not limited to direct and indirect costs, that EPA and the U.S. Department of Justice on behalf of EPA incur subsequent to lodging of this Consent Decree for reviewing or developing plans, reports and other items in connection with the Work performed pursuant to this Consent Decree, overseeing the Removal Action (as defined below) undertaken by persons other than EPA at the Site, or implementing, overseeing, or enforcing this Consent Decree, including but not limited to payroll costs, contractor costs, travel costs, and laboratory costs.

L. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

M. "Parties" shall mean the United States and the Settling Defendants.

N. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, plus Interest on all such costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the date of lodging of this Consent Decree.

O. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Removal Action, set forth in the Removal Action Plan.

P. "Plaintiff" shall mean the United States.

Q. "Removal Action" shall mean the response action at the Swamp portion at the Site as set forth in the Removal Action Plan.

R. "Removal Action Plan" ("RAP") shall refer to the "Removal Action Plan, Ohio Reconditioning Site, Cleveland Ohio," dated August 1997 and approved by EPA. A copy is attached as Appendix A.

S. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

T. "Settling Defendants" shall mean Archer-Daniels Midland Company, Ashland Chemical Company, Division of Ashland, Inc., Baltimore-Ennis Land Company, Inc. (f/k/a/ Gibson-Homans), Brookside Auto Parts, Lincoln Electric Company, Technical Products and Werner G. Smith.

U. "Site" shall mean the Ohio Drum Reconditioning CERCLA Site, encompassing the Ohio Drum industrial property ("Industrial Property"), which is approximately .5 acres in size, located at 3965 West 25th Street, Cleveland, Ohio, and the adjacent Swamp ("the Swamp"), which is depicted on the map attached as Appendix B.

V. "State" shall mean the State of Ohio.

W. "Supervising Contractor" shall mean the principle contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

X. "Swamp" shall mean the portion of the Site that is adjacent to the Industrial Property. The Swamp shall include areas of exposed sediments, sediments adjacent to the exposed

areas that have been covered by fill materials and other debris, and contiguous areas to which hazardous substances and/or pollutants or contaminants have migrated from the Swamp, as delineated in the RAP. The Swamp is depicted on the map attached as Appendix C.

Y. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

Z. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under State law.

AA. "Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree and the RAP, except those required by Section XXIV (Retention of Records).

V. GENERAL PROVISIONS

6. Objectives of the Parties: The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of the Work at the Swamp by the Settling Defendants, to reimburse certain response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

7. Commitments by Settling Defendants:

A. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree and the RAP, as well as additional work plans and other plans, standards, specifications, and schedules developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for certain Past Response Costs and Oversight Costs as provided in this Consent Decree.

B. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of

the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

C. Notice to Successors-in-Title. With respect to any property owned or controlled by an Owner Settling Defendant (Brookside Auto Parts) that is located within the Site, within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Cuyahoga County, State of Ohio, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Swamp, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy for the Swamp. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Owner Settling Defendant shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

D. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access). At least 30 days prior to such conveyance, the Owner Settling Defendant conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

E. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or

secure access, pursuant to Section IX (Access) of this Consent Decree, shall continue to be met by the Owner Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

8. Compliance With Applicable Law: All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the RAP. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

9. Permits:

A. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

B. The Settling Defendants may seek relief under the provisions of Section XVII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

C. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. Selection of the Supervising Contractor

A. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Review of Removal Action), IX

(Quality Assurance, Sampling and Data Analysis), and XVI (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 10 days after execution of this Consent Decree by Settling Defendants, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

B. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 10 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 5 days of EPA's authorization to proceed.

C. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVII (Force Majeure).

11. Removal Action:

A. Within 20 days after receipt of EPA's authorization to proceed, or as soon thereafter as practicable if, after consultation with Settling Defendants, EPA concludes that the weather does not permit commencement of Work within 20 days, Settling Defendants shall commence implementation of the Removal Action, in accordance with this Consent Decree and the design plans and specifications developed in accordance with the RAP and approved by EPA. If Settling Defendants disagree with EPA's determination that the weather should not delay commencement of the Work, Settling Defendants may invoke the dispute resolution procedures set forth in Section XVIII. The RAP, attached as Appendix A, has been approved by EPA and is

incorporated into and enforceable under this Consent Decree. Settling Defendants shall submit to EPA a Health and Safety Plan for field activities required by the RAP which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

B. The Settling Defendants shall submit to EPA all plans, submittals, or other deliverables required under the approved RAP in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence the physical Removal Action at the Site prior to approval of the Supervising Contractor and the Health and Safety Plan.

12. The Settling Defendants shall continue to implement the Removal Action until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the RAP or Related Work Plans:

A. If EPA determines after the commencement of the Work that modification of the RAP is necessary to achieve the Performance Standards or to carry out and maintain the effectiveness of the Removal Action set forth in the RAP, EPA may require that such modification be incorporated in the RAP. EPA may require such a modification pursuant to this Paragraph to the extent that it is consistent with the scope of the Removal Action selected in the RAP.

B. For the purposes of this Paragraph 13 and Paragraph 42 only, the "scope of the Removal Action selected in the RAP" is the: (1) designation of a supervising contractor and project coordinator to oversee the establishment of security at the swamp portion of the Site; (2) development and implementation of a Health and Safety Plan; (3) identification and characterization of lead and PCBs in soil and sediments on the Swamp portion of the Site; (4) excavation, treatment and disposal of all contaminated soils and sediment that contain PCBs at concentrations above 25 ppm and lead at concentrations above 1,700 ppm at the Swamp portion of the Site; (5) confirmatory sampling for lead and PCBs; (6) backfilling with clean soil of those excavated areas to original grade; and (7) maintenance of support facilities and temporary controls at the swamp portion of the Site.

C. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XVIII (Dispute Resolution) and Paragraph 59 (record review). The RAP and/or related work plans shall be modified in accordance with final resolution of the dispute.

D. Settling Defendants shall implement any Work required by any modifications incorporated in the RAP and/or in work plans developed pursuant to the RAP in accordance with this Paragraph.

E. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree or the RAP constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the RAP will achieve the Performance Standards.

15. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Swamp portion of the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

A. The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same State, or to a facility in another state.

B. The identity of the receiving facility and State will be determined by the Settling Defendants following the award of the contract for Removal Action construction. The Settling Defendants shall provide the information required by Paragraph 15.A as soon as practicable after the award of the contract and

before the Waste Material is actually shipped.

C. Nothing in this Section relieves Settling Defendants of any requirements for shipments or disposal of Waste Material in accordance with all applicable environmental laws and rules.

VII. REVIEW OF REMOVAL ACTION

16. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, such as confirmatory sampling as provided in the RAP, in order to permit EPA to conduct reviews of whether the Removal Action, as delineated in the RAP is protective of human health and the environment.

17. EPA Selection of Further Response Actions. If implementation of the Removal Action Plan (as opposed to the RAP itself) is not protective of human health or the environment or the Remedial Action Plan does not achieve the Performance Standards, EPA may select further response actions for the Swamp portion of the Site in accordance with the requirements of CERCLA and the NCP.

18. Opportunity To Comment. Settling Defendants and, if required by Section 113(k)(2) of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted and to submit written comments for the record during the comment period.

19. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Swamp portion of the Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 75 or Paragraph 76 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 75 or Paragraph 76 of Section XX (Covenant Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Removal Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions for the Swamp portion of the Site. Disputes pertaining to whether the Removal Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 59 (record review).

20. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the RAP, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Settling Defendants shall notify EPA not less than 21 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deem necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

23. Settling Defendants shall submit to EPA two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

24. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS

25. Commencing upon the date of execution of this Consent Decree by Settling Defendants, the Settling Defendants agree to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

A. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;

v. Assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. Implementing the Work pursuant to the conditions set forth in this Consent Decree;

vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIII (Access to Information);

viii. Assessing Settling Defendants' compliance with this Consent Decree; and

ix. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25 of this Consent Decree. If any access required to complete the Work is not obtained within 20 days of the date of execution of this Consent Decree by Settling Defendants, or within 20 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States, in accordance with the procedures in Section XV (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

27. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

28. Settling Defendants shall provide EPA with two copies of each report required under the RAP. In the event the time to complete the RAP exceeds four weeks, the Settling Defendants shall submit a progress report describing all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received or generated during the reporting period, a summary of all sampling results, any modifications to the work plan or schedules, the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems and planned resolutions of past or anticipated problems. The progress report shall be submitted within ten days after the fourth week of work. In the event that the Removal Action is completed within the first four weeks of work, Settling Defendants shall be relieved of the requirement to submit a progress report and shall include all required information in a written request for Certification of Completion of Work as set forth in Paragraph 42 of Section XIII (Certification of Completion) that the Work has been fully performed. If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

29. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

30. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Settling Defendants shall within 24 hours of learning of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

31. Within 10 days of the onset of such an event, Settling Defendants shall furnish to Plaintiff a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 20 days of the conclusion of such an

event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

32. Settling Defendants shall submit two copies of all plans, reports, and data required by the RAP or any other approved plans to EPA in accordance with the schedules set forth in such plans.

33. All reports and other documents submitted by Settling Defendants to EPA (other than the progress reports referred to in Paragraph 28 above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

34. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, with the exception of the RAP that EPA has already approved, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within ten days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

35. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 34 subparts (a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 34(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XIX (Stipulated Penalties).

36. A. Upon receipt of a notice of disapproval pursuant to Paragraph 34(d), Settling Defendants shall, within 14 days or

such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XIX, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 37 and 38.

B. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 34(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XIX (Stipulated Penalties).

37. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XVIII (Dispute Resolution).

38. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XVIII (Dispute Resolution) and Section XIX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XIX (Stipulated Penalties).

39. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

40. Within 10 days of execution of this Consent Decree by Settling Defendants, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA, unless the Settling Defendants name Stacy McAnulty of RMT, Inc. as the Project Coordinator because EPA has determined that Ms. McAnulty has the technical expertise sufficient to oversee adequately all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during removal activities.

41. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to the release or threatened release of Waste Material.

XIII. CERTIFICATION OF COMPLETION

42. Completion of the Work

A. Within 30 days after Settling Defendants conclude that the Work has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed and the Performance Standards have been

attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 20 days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Work or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the Removal Action selected in the RAP," as that term is defined in Paragraph 13.B. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the RAP or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution).

B. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, that the Work has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA

will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Work for purposes of this Consent Decree, including, but not limited to, Section XX (Covenant Not to Sue by Plaintiff).

XIV. EMERGENCY RESPONSE

43. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 44, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region 5. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Contingency Plan, and any other applicable plans or documents developed pursuant to the RAP. Settling Defendants shall submit a written report to EPA within seven business days after the release(s), setting forth the event(s) that occurred and the measures taken or to be taken to mitigate any release(s) or endangerment caused or threatened by the release(s) and prevent the recurrence of such release(s). In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Reimbursement of Response Costs).

44. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States (a) to take, all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XX (Covenant Not to Sue by Plaintiff).

XV. REIMBURSEMENT OF RESPONSE COSTS

45. Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$100,000 in reimbursement of Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing U.S.A.O. File Number 1998 V 01107, the EPA Region and Site Spill ID Number 05-26, and DOJ Case Number 90-11-2-1300. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Ohio following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XXV (Notices and Submissions) and to U.S. EPA, Region 5, Chief of the Superfund Accounting and Management Section.

46. Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Oversight Costs not inconsistent with the National Contingency Plan. The United States will send Settling Defendants a bill or an Itemized Cost Summary, that includes direct and indirect costs incurred by EPA and its contractors and the U.S. Department of Justice, and its contractors, if any, on a periodic basis. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 47. The Settling Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #05-26, the DOJ case number 90-11-2-1300, and the name and address of the party making payment. The Settling Defendants shall send the check(s) to the U.S. EPA, Region 5, Superfund Accounting, P.O. Box 70753, Chicago, Illinois, 60673 and shall send copies of the check(s) to the United States as specified in Section XXV (Notices and Submissions).

47. Settling Defendants may contest payment of any Oversight Costs under Paragraph 46 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to

the United States pursuant to Section XXV (Notices and Submissions). Any such objection shall specifically identify the contested Oversight Cost(s) and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30-day period pay all uncontested Oversight Costs to the United States in the manner described in Paragraph 46. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Ohio and remit to that escrow account funds equivalent to the amount of the contested Oversight Costs. The Settling Defendants shall send to the United States, as provided in Section XXV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Oversight Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XVIII (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 46. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 46; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Oversight Costs.

48. In the event that the payments required by Paragraph 45 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 46 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue 30 days after the effective date of this Consent Decree. The Interest on Oversight Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment.

Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 46.

XVI. INDEMNIFICATION AND INSURANCE

49. A. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

B. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 49.A, and shall consult with Settling Defendants prior to settling such claim.

50. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or

on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

51. No later than 15 days before commencing any on-Site Work, Settling Defendants shall provide proof of insurance for its removal action contractor with limits of one million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured. The Settling Defendants shall require their contractor to maintain the required insurance until EPA issues a Certification of Completion of the Work pursuant to Paragraph 42 of Section XIII (Certification of Completion). In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall, if necessary, resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If the contractor or subcontractor does not maintain insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then Settling Defendants need provide that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVII. FORCE MAJEURE

52. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent

Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

53. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, U.S. EPA Region 5, within 72 hours of when Settling Defendants first knew that the event might cause a delay. Within 5 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

54. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the

time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

55. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution), they shall do so no later than 10 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 52 and 53, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XVIII. DISPUTE RESOLUTION

56. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Settling Defendants arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

57. A. Any dispute that arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless the Parties to the dispute agree in writing to extend the time for such negotiations. The dispute under this Consent Decree shall be considered to have arisen when one Party sends the other Parties a written Notice of

Dispute.

58. A. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraphs, then the position of the EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiations, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute. The written Statement of Position shall include any factual data, analysis or opinion supporting the position of Settling Defendants and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 59 or Paragraph 60.

B. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting the position of EPA and any supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 59 or 60. Within five (5) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

C. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 59 or 60, the Parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 59 and 60.

59. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree

shall be construed to allow any dispute by Settling Defendants regarding the validity of the RAP's provisions.

A. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

B. The Director of the Superfund Division, U.S. EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 59.A. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 59.C. and D.

C. Any administrative decision made by EPA pursuant to Paragraph 59.B. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve the dispute, the relief requested, and the schedule, if any, for resolving the dispute to ensure orderly implementation of the terms of this Consent Decree. The United States may file a response to Settling Defendants' motion.

D. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 59.A.

60. Formal dispute resolution for disputes that do not either pertain to the selection or adequacy of any response action or are not otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

A. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 58.A, the Director of the Superfund Division, U.S. EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants

unless, within ten (10) days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

B. Notwithstanding Paragraph 2 of Section II (Jurisdiction) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

61. The invocation of any formal dispute resolution procedure under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 65. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIX (Stipulated Penalties).

XIX. STIPULATED PENALTIES

62. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 63 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the RAP, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

63. For each week, or portion thereof, that Settling Defendants fail to fully perform any requirement of this Consent Decree in accordance with the schedule established pursuant to

this Consent Decree, Settling Defendants shall be liable for each day of each violation as follows:

	<u>First Week or Part Thereof</u>	<u>Each Following Week or Part Thereof</u>
Failure to Commence Implementation of the RAP	\$2500	\$4000
Failure to Meet any Scheduled Deadline in the RAP	\$2500	\$4000
Failure to Submit Monthly Reports	\$750	\$1500
Failure to Submit Final Report	\$750	\$1500

64. Upon receipt of written demand by EPA, the responsible Settling Defendants shall make payment to EPA within 20 days and interest shall accrue on late payments in accordance with Section XV of this Agreement (Reimbursement of Costs). All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. EPA
Region 5
Superfund Accounting
P.O. Box 70753
Chicago, Illinois, 60673

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number 05-26 and DOJ Case Number 90-11-2-1300. Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letters, shall also be sent to EPA and DOJ as provided in Section XXV (Notices and Submissions).

65. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the

31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region V, under Paragraph 59.B. or 60.A. of Section XVIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XVIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

66. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same, describe the noncompliance and provide Settling Defendants with a reasonable opportunity to resolve the alleged deficiency. If Settling Defendants are unable to resolve the identified deficiency, EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

67. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Agreement. Penalties accrue and are assessed per violation per week. Penalties shall accrue regardless of whether EPA has notified the Settling Parties of a violation or act of noncompliance. The payment of penalties shall not alter in any way Settling Parties' obligations to complete the performance of the work required under this Agreement. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If the Settling Parties prevail upon resolution, Settling Parties shall pay only such penalties as the resolution requires. In its unreviewable discretion, EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section. Such a waiver must be made in writing.

68. Violation of any provision of this Consent Decree may subject the Settling Parties to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). The Settling Parties may also be subject to

punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should the Settling Parties violate this Consent Decree or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Consent Decree.

69. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 8622(1), provided however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

70. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

71. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

XX. COVENANT NOT TO SUE BY PLAINTIFF

72. Covenant Not to Sue by United States: In consideration of the actions that have been and will be performed and the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 75, 76, and 78-80 of this Section, the United States covenants not to sue or take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) relating to the Site.

73. Except with respect to future liability, this covenant not to sue shall take effect upon receipt by EPA of the payments required by Paragraph 45 (Reimbursement of Response Costs). With

respect to such future liability, this covenant not to sue shall take effect upon Certification of Completion of the Work pursuant to Paragraph 42 of Section XIII (Certification of Completion). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

74. Upon entry of this Consent Decree, the Unilateral Administrative Order issued by EPA pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a) shall be withdrawn as to the Settling Defendants.

75. United States' Pre-certification reservations:
Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating only to the Swamp portion of the Site, or (2) to reimburse the United States for additional costs of response relating only to the Swamp portion of the Site if, prior to Certification of Completion of the Work:

- (i) conditions relating to the Swamp portion of the Site, previously unknown to EPA, are discovered, or
- (ii) information regarding the Swamp portion of the Site, or the protectiveness of the Removal Action, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Removal Action at the Swamp is not protective of human health or the environment.

76. United States' Post-certification reservations:
Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating only to the Swamp portion of the Site or, (2) to reimburse the United States for additional costs of response relating only to the Swamp portion of the Site if, subsequent to Certification of Completion of the Work:

- (i) conditions relating to the Swamp portion of the Site, previously unknown to EPA, are discovered, or

- (ii) information regarding the Swamp portion of the Site, previously unknown to EPA, is received, in whole or in part, after the Certification of Completion,

and these previously unknown conditions or this information together with other relevant information indicate that the Removal Action at the Swamp is not protective of human health or the environment.

77. For purposes of Paragraph 75, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of the RAP for the Site. For purposes of Paragraph 76, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Work.

78. General reservations of rights. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 72. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

- (2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

- (3) liability for future disposal of Waste Material at the Site, other than as provided in the RAP, the Work, or otherwise ordered by EPA;

- (4) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

- (5) criminal liability;

- (6) liability for violations of federal or state law which occur during or after implementation of the Removal Action; and

- (7) liability, prior to Certification of Completion of the Work, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the RAP or related work plans);

79. In the event that EPA determines that Settling Defendants have failed to implement any provisions of the Work in an adequate and timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute EPA's determination that Settling Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with the law. Such a dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Oversight Costs that the Settling Defendants shall pay pursuant to Section XV (Reimbursement of Response Costs), unless the Settling Defendants prevail in the Dispute Resolution procedures.

80. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

81. Covenant Not to Sue. Subject to the reservations in Paragraph 83, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to:

A. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

B. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to the Site;

C. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities; and

D. any claims for costs, fees, or expenses incurred in this action, including claims under 20 U.S.C. § 2412 (Equal Access to Justice Act), as amended.

82. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against each other and any other "person," as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), with regard to the Site pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613. Settling Defendants do not waive any right to pursue an action against any other Settling Party that fails to meet any of its obligations under this Consent Decree or pursuant to any other agreement among the Settling Defendants pertaining to the performance of Work at the Site.

83. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

84. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

85. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence

relating in any way to the Site against any person not a Party hereto, except as provided in Paragraph 82.

86. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all Response Costs (including Past Response Costs) and Oversight Costs incurred or to be incurred by the United States or any private party with respect to the Site. The "matters addressed" in this Consent Decree do not include those Response Costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

87. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

88. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

89. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XX (Covenant Not to Sue by Plaintiff).

XXIII. ACCESS TO INFORMATION

90. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the swamp portion of the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

XXIV. RETENTION OF RECORDS

91. Until five years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

92. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any

such dispute has been resolved in the Settling Defendants' favor.

93. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

A. Conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

B. Not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

C. Fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXV. NOTICES AND SUBMISSIONS

94. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-1300)
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611

As to EPA:

KEVIN C. CHOW
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to Settling Defendants:

JOHN W. WATSON, III
Gardner, Carton & Douglas
Quaker Tower
321 North Clark Street
Chicago, Illinois 60610-4795

XXVI. EFFECTIVE DATE

95. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XXVII. RETENTION OF JURISDICTION

96 This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XXVIII. INTEGRATION/APPENDICES

97. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent

Decree.

"Appendix A" is the "Removal Action Plan, Ohio Reconditioning Site, Cleveland Ohio," dated August 1997;

"Appendix B" is the map of the Site; and

"Appendix C" is the map of the Swamp.

XXIX. MODIFICATION

98. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

99. Except as provided in Paragraph 13.B ("Modification of the RAP or related Work Plans"), no material modifications shall be made to the RAP without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the RAP that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

100. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXX. SEVERABILITY

101. If the Court invalidates any provision of this Consent Decree or finds that Settling Defendants need not comply with one or more of the provisions of this Consent Decree, Settling Defendants shall remain obligated to comply with all provisions of this Consent Decree not invalidated by the Court's order.

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

102. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants

consent to the entry of this Consent Decree without further notice.

103. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXII. SIGNATORIES/SERVICE

104. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

105. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

106. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

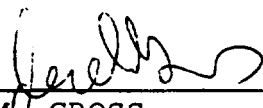
SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

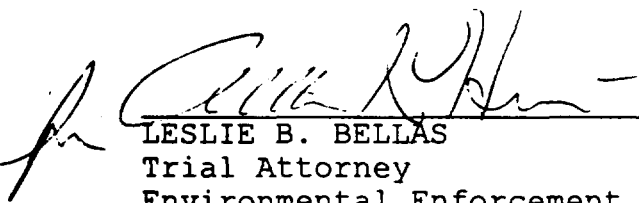
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Archer-Daniels-Midland Company, et al., relating to the Ohio Drum Reconditioning Site in Cleveland, Ohio.

FOR THE UNITED STATES OF AMERICA

Date: 10/2/67

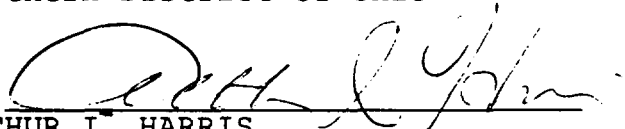


JOEL M. GROSS
Section Chief
Environment Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice



LESLIE B. BELLAS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 616-6515
Facsimile: (202) 616-6584

EMILY M. SWEENEY
United States Attorney for the
Northern District of Ohio

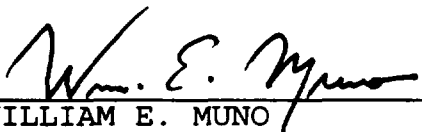
By: 

ARTHUR I. HARRIS
Assistant United States Attorney
Southern District of Ohio
1800 Bank One Center
600 Superior Ave., East
Cleveland, Ohio 44114
Phone: (216) 622-3711


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Archer-Daniels-Midland Company, et al., relating to the Ohio Drum Reconditioning Site in Cleveland, Ohio.

Date: _____

8/28/92



WILLIAM E. MUNO
Director, Superfund Division
Region 5
U.S. Environmental Protection
Agency
77 West Jackson Boulevard
Chicago, Illinois 60604



KEVIN C. CHOW
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Telephone: (312) 353-6181
Facsimile: (312) 886-0747

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Archer-Daniels-Midland Company, et al., relating to the Ohio Drum Reconditioning Site in Geneva, Ohio.

for

FOR THE SETTLING DEFENDANT
(Please type or print, except
signature line for Officer)

Date: 8/4/98

Archer-Daniels-Midland Company
Name of Settling Defendant

P. O. Box 1470, Decatur, Illinois 62525
Address

217/424-5200
Telephone Number

Charles Bayless
Name of Officer


Signature of Officer

Vice President
Title

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

John W. Watson, Esq.

Name

Gardner, Carton & Douglas

Address

321 N. Clark Street
Suite 3100
Chicago, IL 60610

Attorney

John W. Watson, Esq.

Name

Gardner, Carton & Douglas
321 N. Clark Street, Suite 3100, Chicago, IL

Address

60610

(312) 245-8749

Telephone

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Archer-Daniels-Midland Company, et al., relating to the Ohio Drum Reconditioning Site in Geneva, Ohio.

for

FOR THE SETTLING DEFENDANT
(Please type or print, except
signature line for Officer)

Date: 6/26/98

ASHLAND CHEMICAL CO. DIVISION OF ASHLAND INC.
Name of Settling Defendant

PO BOX 2219 COLUMBUS, OH. 43216
Address

(614) 790-3280
Telephone Number

SCOTTY B. PATRICK
Name of Officer

[Signature]
Signature of Officer

GROUP VICE PRESIDENT
Title

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

GERTRUDE M. KELLY
Name ASHLAND CHEMICAL COMPANY
PO BOX 2219
Address COLUMBUS, OHIO 43216

Attorney

GERTRUDE M. KELLY
Name PO BOX 2219 ASHLAND CHEMICAL COLUMBUS, OH.
Address 43216
(614) 790-3280
Telephone

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Archer-Daniels-Midland Company, et al., relating to the Ohio Drum Reconditioning Site in Cleveland, Ohio.

for

FOR THE SETTLING DEFENDANT
(Please type or print, except
signature line for Officer)

Date: July 24, 1998

Baltimore Ennis Land Company, Inc. (fka
Name of Settling Defendant Gilbertson's)

20200 Sheldon Road, Cleveland OH 44142
Address

440-816-7616
Telephone Number

Robert A. Rae
Name of Officer

Robert A. Rae
Signature of Officer

Vice President
Title

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Name

Hannoch Weisman, Att. Mr. Jeffrey A. Cohen
Name

Address

4 Becker Farm Road, Roseland NJ 07068-3788
Address

973-535-5300
Telephone

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Archer-Daniels-Midland Company, et al., relating to the Ohio Drum Reconditioning Site in Geneva, Ohio.

for

Date:

8/1/98

FOR THE SETTLING DEFENDANT
(Please type or print, except
signature line for Officer)

Brookside Auto Parts, Inc.

Name of Settling Defendant

3979 Pearl Rd.
Cleveland, Ohio 44109

Address

216-749-0880

Telephone Number

Thomas Blake

Name of Officer

Thomas A. Blake

Signature of Officer

Vice President

Title

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service. Service shall be made directly to Settling Defendant.

Agent for Service

Name

Address

Attorney

Eugene I. Selker

Name

OHIO SAVINGS PLAZA

Address

CLEVELAND, OHIO 44114

216-781-8686

Telephone

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Archer-Daniels-Midland Company, et al., relating to the Ohio Drum Reconditioning Site in Cleveland Ohio.

for

FOR THE SETTLING DEFENDANT
(Please type or print, except
signature line for Officer)

Date: June 29, 1998

The Lincoln Electric Company
Name of Settling Defendant
22801 St. Clair Avenue
Cleveland, OH 44117-1199
Address

216-481-8100
Telephone Number

Frederick G. Stueber
Name of Officer

Frederick G. Stueber
Signature of Officer

FREDERICK G. STUEBER
Title Senior Vice President,
General Counsel
and Secretary

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Name

Name

Address

Address

Telephone

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Archer-Daniels-Midland Company, et al., relating to the Ohio Drum Reconditioning Site in Cleveland, Ohio.

for

FOR THE SETTLING DEFENDANT
(Please type or print, except
signature line for Officer)

Date: 7-20-98

Technical Products, Inc.
Name of Settling Defendant

3500 Ridge Rd., Cleveland, Ohio 44102
Address

(216) 961-3340
Telephone Number

Richard Kelly
Name of Officer

President
Signature of Officer

Richard Kelly
Title

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Ann C. Tighe
Name

Ann C. Tighe
Name

33 N. Dearborn, #600
Address
Chicago, IL 60602

33 N. Dearborn, Suite 600, Chicago, IL
Address 60602
(312) 263-0345
Telephone

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Archer-Daniels-Midland Company, et al., relating to the Ohio Drum Reconditioning Site in ~~Geneva~~ Cleveland, Ohio.

for

Date:

July 6 1998

FOR THE SETTLING DEFENDANT
(Please type or print, except

signature line for Officer)

Name of Settling Defendant

Address

Telephone Number

Name of Officer

Signature of Officer

Title

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Name _____

Address

Attorney

Name _____

Address

Telephone

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.